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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91193649
Party	Defendant Posit Science Corporation
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Date	01/10/2011
Attachments	Posit - Answer.pdf (5 pages)(265970 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/745,259
For the Trademark: DRIVESHARP
Published in the Official Gazette on October 6, 2009

SHARP KABUSHIKI KAISHA, a/t/a)
SHARP CORPORATION,)

Opposer,

v.)

Opposition No. 91193649

POSIT SCIENCE CORPORATION,)

Applicant.)

APPLICANT'S ANSWER
TO NOTICE OF OPPOSITION

**APPLICANT POSIT SCIENCE CORPORATION'S
ANSWER TO NOTICE OF OPPOSITION**

Posit Science Corporation ("Applicant"), by and through its attorneys, Cooley LLP, hereby answers Opposer Sharp Kabushiki Kaisha, a/t/a Sharp Corporation's ("Sharp Corporation") Notice of Opposition. Applicant responds to the numbered paragraphs of Sharp Corporation's Notice of Opposition as follows:

1. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Notice of Opposition, and on that basis denies the same.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Notice of Opposition, and on that basis denies the same.

3. Applicant admits that Sharp Corporation is the registrant of record for U.S. Registration Nos. 2,765,106, 3,490,700, 2,756,747, 3,482,580, 3,114,549, 3,564,815, 1,405,542, 3,619,714, 1,725,154, 1,606,267, 1,093,113, 1,985,630, 1,859,359, 1,526,673, 1,517,107, 1,470,546, 1,120,410, 1,059,852, 877,692, 842,768, 2,887,128, 2,350,486, 2,207,058 and 2,297,620 (the “Sharp Corporation Registrations”) which registrations speak for themselves. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3 of the Notice of Opposition, and on that basis denies the same.

4. Applicant denies the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations in Paragraph 5 of the Notice of Opposition.

6. Applicant admits that it seeks to register the mark DRIVESHARP in connection with “computer software for use in maintaining or improving cognitive performance and/or brain plasticity and manuals provided together as a unit.” Applicant denies the remainder of the allegations in Paragraph 6 of the Notice of Opposition.

7. Applicant admits that the term “DRIVE” is included in its mark. Applicant denies the remainder of the allegations in Paragraph 7 of the Notice of Opposition.

8. Applicant admits that the term “SHARP” is included in its mark. Applicant denies the remainder of the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations in Paragraph 10 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Sharp Corporation fails to state a claim on which relief can be granted.

2. Applicant seeks to register Applicant's mark for products and/or services different than the products and/or services for which the Sharp Corporation Registrations are registered.
3. No likelihood of confusion, mistake, or deception exists between the Sharp Corporation marks and Applicant's mark because they are different in overall sight, sound, and meaning.
4. No likelihood of confusion, mistake, or deception exists between the Sharp Corporation marks and Applicant's mark because, on information and belief, the channels of trade and customers for the parties' respective products and/or services are separate and distinct.
5. No likelihood of confusion, mistake, or deception exists between the Sharp Corporation marks and Applicant's mark because the prospective customers of Applicant and Sharp Corporation are sophisticated and careful with respect to purchasing decisions and specifically with respect to the sources of such goods.
6. Applicant seeks to register a mark that, when used on or in connection with the goods and/or services of the Applicant, is not merely descriptive or deceptively misdescriptive of them.
7. Sharp Corporation lacks standing to oppose Applicant's mark in that Sharp Corporation is not likely to be damaged by the continuing registration of Applicant's mark.
8. Applicant presently has insufficient knowledge or information upon which to form a belief as to whether it has additional, but as-yet-unstated, affirmative defenses available. Accordingly, Applicant hereby reserves the right to assert additional affirmative defenses in the event it determines that such defenses are appropriate.

PRAYER FOR RELIEF

WHEREFORE, Applicant prays that Sharp Corporation's Opposition be dismissed in its entirety and that a registration issue to Applicant for its DRIVESHARP mark.

COOLEY LLP

Date: January 10, 2011

By:

A handwritten signature in dark ink, appearing to read "Anne H. Peck", is written over a horizontal line.

Anne H. Peck, Esq.

Attorneys for Applicant
Posit Science Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was mailed, first-class postage prepaid, to counsel for Opposer at the address listed below, this 10th day of January 2011.

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